

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

ERIC M TOMPKINS  
123 – 1<sup>ST</sup> AVE NW #1  
WAVERLY IA 50677

HY-VEE INC  
c/o TALX UCM SERVICES INC  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-07749-DWT  
OC: 06/06/04 R: 03  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Hy-Vee, Inc. (employer) appealed a representative's July 9, 2004 decision (reference 01) that concluded Eric M. Tompkins (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 24, 2004. The claimant participated in the hearing. David Williams, a representative with TALX, appeared on the employer's behalf, with Brock Sands and Kurt Graves testifying on the employer's behalf. During the hearing, Employer's Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The claimant started working for the employer on July 14, 1995. He worked as a night stocker. His supervisor was Graves. The employer's policy informs night stock employees they must pay for all products before the product is consumed, cooked or read and if the employee violates the policy, the employer may discharge the employee. The claimant received a copy of the employer's policy. (Employer's Exhibit One)

During the claimant's shift the evening of June 6/morning of June 7, Graves observed the claimant in the break room eating a frozen TV dinner. Although Graves did not say anything to the claimant, he reported the incident to Sands when he came to work.

After Sands learned the claimant had not paid for any food during his shift, he talked to the claimant. Initially, the claimant told Sands he ate a TV dinner he had brought from home. After the employer asked him where he kept the dinner until he ate it, the claimant then indicated he had actually eaten food he picked up from the employer's back cooler. The claimant acknowledged he did not pay for the food Graves saw him eating.

When the employer told him he was discharged for consuming the employer's property without first paying for it, the claimant did not report he had only taken food from the deli that he believed was too old to sell. The claimant assumed employees could take expired food from the deli and eat it without paying for this food.

The claimant established a claim for unemployment insurance benefits during the week of June 6, 2004. He filed claims for the weeks ending June 12 through August 21, 2004. He received his maximum weekly benefit amount of \$295.00 for each of these weeks.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant understood the employer's policy that employees could be discharged if they ate the employer's food without first paying for it. The claimant's assertions that he understood employees did not have to pay for expired food from the deli and ate expired food on June 6 is not supported by the evidence. First, the employer saw a frozen TV dinner box by the claimant in the break room. Next, the claimant initially told the employer he was eating food he had brought from home. Finally and most importantly, the claimant said nothing on June 7 about

eating expired food from the deli. The credible evidence instead establishes the claimant took one of the employer's frozen TV dinners and ate it without paying for it on June 6. The evidence shows the claimant intentionally violated the employer's policy. The employer discharged the claimant for reasons constituting work-connected misconduct. As of June 6, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending June 12 through August 21, 2004. He has been overpaid a total of \$3,245.00 in benefits he received for these weeks.

**DECISION:**

The representatives' July 9, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 6, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending June 12 through August 21, 2004. He has been overpaid and must repay a total of \$3,245.00 in benefits he received for these weeks.

dlw/b